

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2015-000307-001 DT

09/01/2015

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT

J. Eaton

Deputy

STATE OF ARIZONA

JENNIFER BOOTH

v.

RAB NAWAZ CHOUDRI SR. (001)

JEFFREY D ROSS

PHX CITY MUNICIPAL COURT

PHX MUNICIPAL PRESIDING JUDGE

REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case Number 2014-9014909-01 & -03.

Defendant-Appellant Rab Nawaz Choudri Sr. (Defendant) was convicted in Phoenix Municipal Court of driving under the influence and driving under the extreme influence. Defendant contends the trial court abused its discretion in denying his motion for judgment of acquittal. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On July 2, 2014, the State charged Defendant with driving under the influence, A.R.S. § 28-1381(A)(1) & (A)(2); and driving under the extreme influence, A.R.S. § 28-1382(A)(1) (0.15 or more). At the trial in this matter, Melissa McComb testified that she was stopped at the intersection of 24th Street and Thomas Road at about 7:38 p.m. on March 18, 2014, when an SUV collided with the rear of her vehicle, which she said was a Ford Focus. (R.T. of Feb. 3, 2015, at 4-6, 17.) As she was getting out of her vehicle, the other vehicle hit her vehicle again. (*Id.* at 6.) She saw the driver sitting in the driver's seat. (*Id.* at 18.) She approached the driver of the other vehicle and identified him as Defendant. (*Id.* at 7, 11.) She could smell the odor of alcohol on his breath, and based on that and her other observations, she said to him, "You're drunk." (*Id.* at 8-9.) She saw him placing empty beer cans into a paper bag. (*Id.* at 9.) Defendant asked her not to call the police. (*Id.* at 9-10.) While this was happening, another woman arrived, and after observing Defendant's behavior, took the keys out of the ignition of Defendant's vehicle. (*Id.* at 9-12.) Defendant then began chasing this other woman around his vehicle. (*Id.* at 10.)

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2015-000307-001 DT

09/01/2015

Joyce Hines saw a collision at 24th Street and Thomas Road at about 7:38 p.m. on March 18, 2014. (R.T. of Feb. 3, 2015, at 19–20.) She saw a man, identified as Defendant, standing next to the driver's side of an SUV. (*Id.* at 20–21.) She heard Defendant ask Ms. McComb not to call the police and saw him trying to put a paper bag underneath the seat. (*Id.* at 22.) Ms. Hines then called the police and took the keys out of the ignition of Defendant's vehicle because she "felt that somebody else could be in danger by him driving." (*Id.* at 21–23.) She smelled alcohol on his breath and saw he was "kind of wobbly in his standing." (*Id.* at 23.) After Ms. Hines took the keys from Defendant's vehicle, he chased her around the vehicle "three or four times" until she was able to get into her vehicle and leave the scene. (*Id.* at 23–24.) When the police arrived, she returned and gave the keys to an officer. (*Id.* at 24–25.)

Mario Montoya was near the intersection of 24th Street and Thomas Road at about 7:38 p.m. on March 18, 2014. (R.T. of Feb. 3, 2015, at 27.) At that point, he saw a pickup truck or SUV collide with the rear of a compact vehicle. (*Id.* at 28.) He then called the police. (*Id.* at 29.)

On March 18, 2014, at 7:40 p.m., Officer Aaron Coon responded to a collision at 2900 North 24th Street. (R.T. of Feb. 3, 2015, at 31–32, 35.) He saw a Ford Focus and a Lincoln Navigator directly behind it, and a man, identified as Defendant, standing next to the driver's side door of the Lincoln. (*Id.* at 35–36.) When Officer Coon was 6 to 10 feet away, he called to Defendant, but Defendant did not respond and instead walked to the rear door, opened the door, looked in, closed the door, and walked to the passenger's side of the vehicle. (*Id.* at 37–38.) Officer Coon described Defendant as having balance issues because he had to brace himself against the vehicle to keep his balance. (*Id.* at 38.) He noticed Defendant had bloodshot, watery eyes, slurred speech, and an odor of alcohol. (*Id.* at 39.) While they were talking, Defendant almost stumbled into the lane of traffic, so Officer Coon placed Defendant under arrest and attempted to do an HGN test. (*Id.* at 39–40.) Defendant had a hard time walking, and Officer Coon had to hold on to him at times. (*Id.* at 40–41, 54.)

On March 18, 2014, Officer Paul Brown responded to a collision to assist Officer Coon. (R.T. of Feb. 3, 2015, at 55–56.) When Officer Brown checked the inside of Defendant's vehicle, he found three empty beer cans under some clothing. (*Id.* at 58–60.)

Officer Eric Thrower testified he operated a DUI van for the Phoenix police. (R.T. of Feb. 3, 2015, at 70–71.) On March 18, 2014, at about 8:31 p.m., an officer brought Defendant to the DUI van. (*Id.* at 74.) Defendant had difficulty getting into the DUI van, and Officer Thrower noted Defendant had bloodshot, watery eyes and an odor of alcohol. (*Id.* at 75, 98.) One of the officers got a cup of water for Defendant, and Defendant promptly spilled that water on the counter. (*Id.* at 75.) Officer Thrower then took a sample of Defendant's blood at 8:46 p.m. (*Id.* at 79.) During the DUI questioning, Defendant acknowledged he was driving, that he ran into another vehicle, and that he had consumed "a couple [of] beers." (*Id.* at 83.)

John Musselman testified he was a forensic scientist with the Phoenix Police Department Crime Laboratory and that he tested the sample of Defendant's blood. (R.T. of Feb. 5 2015, at 5, 11, 18.) The results of that testing showed Defendant's BAC was 0.189. (*Id.* at 19–20.) To reach that BAC, a person of Defendant's size would have to drink between eight and nine standard drinks of alcohol. (*Id.* at 23.)

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

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09/01/2015

After presenting those witnesses, the State rested. (R.T. of Feb. 5 2015, at 32.) Defendant did not present any witnesses. (*Id.* at 33.) Defendant's attorney then made a motion for judgment of acquittal, which the trial court denied. (*Id.* at 38–40.) After hearing arguments and instructions, the jurors found Defendant guilty of all three charges. (*Id.* at 44–45.) The trial court dismissed Count 2 as a lesser-included offense and proceeded with sentencing. (*Id.* at 46–52.) On that same day, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZ. CONST. Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUE: DID THE TRIAL COURT ABUSE ITS DISCRETION IN DENYING DEFENDANT'S
MOTION FOR JUDGMENT OF ACQUITTAL.

Defendant contends the trial court abused its discretion in denying his motion for judgment of acquittal. The trial court should deny a motion for a judgment of acquittal when there is substantial evidence to support a conviction; in determining whether there is substantial evidence, the trial court must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Parker*, 231 Ariz. 391, 296 P.3d 54, ¶ 70 (2013). In light of the testimony recounted above, this Court concludes the trial court was correct in finding the evidence was sufficient for the case to go forward to the jurors. The trial court therefore correctly denied Defendant's motion for judgment of acquittal.

III. CONCLUSION.

Based on the foregoing, this Court concludes the trial court therefore correctly denied Defendant's motion for judgment of acquittal.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the Phoenix Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Phoenix Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen

THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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